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October 4, 2002

Honorable Michael K. Powell, Chairman
Federal Communications Commission
Washington, DC 20554

**Re: Response to *Ex Parte* Filing
ET Docket No. 00-221 and PR Docket No. 92-257**

Dear Chairman Powell:

This letter is being filed on behalf of the Hearing Industries Association ("HIA") in response, and in opposition, to *ex parte* presentations made by MOBEX Communications, Inc. ("MOBEX") to your office and to the offices of Commissioners Copps, Abernathy, and Martin, on September 18, 2001, and to the Wireless Telecommunication Bureau, Office of Engineering and Technology, and the Auctions and Industry Analysis Division on August 22, 2001. The MOBEX presentations are documented in written reports filed with the Commission on August 22 and September 19 and 20, 2001.

The MOBEX presentations concerned the future allocation of the 216-220 MHz band. HIA is particularly concerned about the 216-217 MHz band, which is currently used by assistive listening devices ("ALDs") that operate in the Low Power Radio Service ("LPRS"). HIA represents manufacturers of ALDs and filed written comments and reply comments in the rule making, urging that nothing be done to disturb the operation of ALDs or to subject the spectrum used by ALDs to auction.

MOBEX proposes the elevation of ALDs to primary status, which HIA supported in its comments; but it also urges that the 216.5-217.0 and 218.5-219.0 MHz be reallocated to the Automated Maritime Telecommunication Service ("AMTS"), a land and maritime mobile service that MOBEX offers or plans to offer to the public. The LPRS, in which ALDs operate, would be given access to the 218.0-218.5 MHz band to make up for the loss of the 216.5-217.0 MHz band. This position, as presented to the Commissioners, appears to be a partial withdrawal from the

position presented to the Staff, which was that the entire 216-217 MHz band should be reallocated to AMTS.

HIA opposes MOBEX's proposal, because it would be extremely harmful to ALDs and would impose serious costs and inconvenience on the hard-of-hearing community, for the following reasons:

1. ALDs have been designed to operate in the entire 216-217 MHz band and are not capable of operating at 218 MHz. Redesign to operate at 218 MHz would involve substantial costs, which would have to be passed on to the hard-of-hearing user community. Significant costs would also be incurred to rechannelize existing units operating above 216.5 MHz, including the Phonak systems discussed further below.

2. Most, if not all, ALDs currently available use crystal-controlled analog FM radio systems. They are designed to be resistant to interference, with a narrow receiver front end. It is unlikely that they could be designed to operate at both 216 and 218 MHz without adding to cost and possibly to the size of the receiver. It should be noted that size is critical as miniaturization has made ALDs more cosmetically acceptable, an element of special importance to young users. Thus, if the ALD band were split, some units would be built at 216 MHz, and others at 218 MHz. In that situation, a hard-of-hearing student at an educational institution would no longer be able to enter any classroom wearing the same ALD. Multi-channel installations would need two sets of receivers, and hard-of-hearing persons who travel could not be assured of being able to use their ALD receivers in all public places where FM systems are deployed.

3. HIA disagrees with MOBEX's premise that ALDs currently have access to only 216.0-216.75 MHz, so that giving them access to 218.0-218.5 MHz would in effect increase their available spectrum by 0.25 MHz to a total of 1.0 MHz. The 216.75-217.0 MHz band currently does have some high powered operations in it, but it is not foreclosed to ALD operation at many locations. By way of example, Phonak, Inc., a manufacturer of ALDs, produces a 23-channel product, of which 12 channels are above 216.5 MHz, and six channels are above 216.75 MHz. Thus there would be no material benefit in terms of extra spectrum that might arguably offset some of the cost and other burdens resulting from band-splitting.

4. The 216-217 MHz band is uniquely suited for ALDs and uniquely unsuitable for competing harmful uses, because of its immediate proximity to television broadcast Channel 13 at 210-216 MHz. To avoid interference to TV reception, LPRS power levels are highly restricted; and the same restrictions that protect TV reception also protect ALDs from receiving destructive interference. Particularly because AMTS already has access to 217-218 MHz, there is less justification for confining operations in the higher 218-219 MHz band

to very low power; so there is less justification for preserving 218.0-218.5 MHz for very low power systems. It must be remembered that it was the increasing intrusion of high powered systems into the original ALD band at 72-73 and 75.4-76 MHz that drove the need to open up 216-217 MHz as a new home for ALDs. HIA emphatically disagrees that the other bands cited by MOBEX (173-185, 186-201, and 207-217 MHz) are equally suitable for ALDs or that the broadcasting industry would agree to the use of VHF television channels for ALDs given the pressure on broadcast spectrum to accommodate digital television and the difficulty of identifying and locating an ALD that caused co-channel interference to television reception. It is also not appropriate to require ALD users who travel to determine which television channels might be available in each place they visit and to obtain equipment suitable for operation on those channels.

It is not difficult to understand why MOBEX would rather have access to 3 MHz for AMTS than only 2 MHz of spectrum. However, such access must not come at the expense of the hard-of-hearing community. A great deal of spectrum is devoted to land mobile radio services, but only a small amount is usable for interference-free ALD operation. The need for ALDs, and the enormous benefit they have provided to a large number of our citizens has been documented by HIA in its comments in this proceeding, as well as in previous rule makings. Indeed, with digital equipment being developed and schools growing in size, a need is developing for more, not fewer, channels for ALDs. Equipment redesign costs and incompatibility that would result from splitting the band cannot be justified in the public interest.

MOBEX might be able to purchase licenses in the 220-222 MHz band or licenses in the 218-219 MHz Service if it needs more spectrum. But it is not for HIA to suggest those solutions. The answer to MOBEX's quest for commercial success must be found by MOBEX, and not at the expense of the hard-of-hearing community.

A brief preview of what this letter would say was communicated by the undersigned by telephone to Peter Tenhula of the Chairman's Office on September 28, 2001.

Very truly yours,

/s/ Peter Tannenwald

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This letter is being submitted electronically to the Commission through the Electronic Comment Filing System and is also being sent by e-mail to participants in the MOBEX *ex parte* meetings as follows:

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